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NOV 23 2005

**OFFICE OF PETITIONS**

In re Application of	:
Toshio Yamawaki	:
Application No. 09/530,145	:
Filed: April 24, 2000	:
Atty Docket No.: 37395/DBP/A400	:
	DECISION ON
	PETITION

This is a decision in response to the Petition to Withdraw Holding of Abandonment Due Under 37 CFR 1.181(a).

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the Notice of Non-Compliant Amendment ("Notice"), mailed February 2, 2005. The Notice set a one (1) month period for reply. No response having been received, the application became abandoned on March 3, 2005. A Notice of Abandonment was mailed October 17, 2005.

**Petition under 37 CFR 1.181**

Applicant files the instant petition wherein Applicant avers that he did not receive the Office action. In support of this assertion, Applicant files a Declarations of the Supervisor of the Docketing Department, and of the Legal Assistant to Applicant asserting that reviews of the log entries and file reveal that the Notice was not received. Applicant also files copies of the weekly prosecution calendars for the attorneys Application No. 09/530,145

responsible for the prosecution of the above-identified application, putatively for the period of February 2, 2005 through March 2, 2005, which is allegedly where the non-received Notice would have been entered had it been received. Petition at p.2.

Applicant is advised that, "[i]n order to overcome the presumption of delivery of an Office action, a practitioner must submit the following:

- (1) A statement from the practitioner stating the Office action was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received, and
- (3) A copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

MPEP 711.03(c)

A review of the copies of the weekly prosecution calendars for the attorneys responsible for the prosecution of the above-identified application, putatively for the period of February 2, 2005 through March 2, 2005, reveal the dates of the calendar to be February 28, 2004 through March 14, 2004, and NOT February 2, 2005 through March 2, 2005. Here, Applicant has failed to provide copies of his docket record where the non-received Notice would have been entered had it been received and docketed.

As such, the petition under 37 CFR 1.181 is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Commissioner for Patents  
                                 PO Box 1450  
                                 Alexandria, VA 22313-1450

By FAX:                   (571) 273-8300  
                                 Attn: Office of Petitions

By hand:                   Customer Service Window  
                                 Randolph Building  
                                 401 Dulany Street  
                                 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

*Derek L. Woods*  
Derek L. Woods  
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